



BROADBANDUSA
CONNECTING AMERICA'S COMMUNITIES

U.S. Department of Commerce
National Telecommunications and Information Administration

Compliance Requirements Webinar

Broadband Technology Opportunities Program (BTOP)

Washington, DC
August 2010



Made Possible by the Broadband Technology Opportunities Program

Funded by the American Recovery and Reinvestment Act of 2009





Before We Begin

- Please send us questions using the “Questions” pane in your GoToWebinar account throughout the webinar
- We will answer questions at the end of the presentation to the entire group
- If you have any questions after the webinar:
 - Contact the BTOP Help Desk at BTOP@ntia.doc.gov or 202-482-2048
 - Visit the BTOP website at <http://www2.ntia.doc.gov/management>





Agenda

- Federal Regulations
 - Administrative Requirements
 - Cost Principles
 - Audit Requirements
 - Key American Reinvestment and Recovery Act Requirements
 - Special Award Conditions
- Department of Commerce Policies
- Reporting Deadlines and Enforcement
- Questions





Key Roles

- Each BTOP award is supported by a Federal Program Officer and a Grants Officer
- **Federal Program Officer (FPO)** is responsible for documenting evaluation and recommendation for award to grants officer and for monitoring and oversight of the work conducted under the award
 - All project types are assigned an FPO from the Department of Commerce National Telecommunications and Information Administration (NTIA)
- **Grants Officer** is the only official with authority to bind the government, obligate funds, amend award, suspend or terminate award, resolve audits, and other administrative aspects
 - Infrastructure awards are assigned Grants Officers from the National Oceanic and Atmospheric Administration (NOAA) Grants Office
 - SBA and PCC awards are assigned Grants Officers from the National Institute of Standards and Technology (NIST) Grants Office





BTOP grant awards are governed by a large number of federal rules and regulations

- Recipient's financial management system must appropriately track and account for federal grants funds and expenditures associated with the funded project.
- Recipients must abide by OMB cost principles stating which costs are allowable
- Recipients must abide by written procedures in place for minimizing fund draw downs, procurement, and property standards
- Recipients must keep accounting records that include supporting documentation for all costs
- Recipients may draw down funds as needed, but cannot keep advanced funds for longer than 30 days
- Recipient must request prior approvals for changes to their budget, key personnel, etc.
- The DOC Office of Inspector General has the right to access all grant records
- Recipients are required to submit quarterly and annual performance and financial reports
- Grant recipients are subject to audit





Applicable Financial Assistance Regulations

Organization Type	Administrative Requirements	Cost Principles	Audit Regulations and Standards
For Profit Entities	15 CFR Part 14	48 CFR Part 31.2 (Federal Acquisition Regulations)	Government Auditing Standards (The Yellow Book)* OMB Circular A-133, Subpart B § 235
Institutions of Higher Education	15 CFR Part 14	2 CFR Part 220 (OMB Circular A-21)	OMB Circular A-133
Non Profit Organizations	15 CFR Part 14	2 CFR Part 230 (OMB Circular A-122)	OMB Circular A-133
Hospitals	15 CFR Part 14	45 CFR, Part 74(E)	OMB Circular A-133
State, Local and Tribal Governments	15 CFR Part 24	2 CFR Part 225 (OMB Circular A-87)	OMB Circular A-133

* Government Auditing Standards can be found at <http://www.gao.gov/govaud/ybk01.htm>





Additional Regulations, Policies, and Resources

- **Department of Commerce Financial Assistance Standard Terms and Conditions**
<http://oam.ocs.doc.gov/docs/GRANTS/DOC%20STCsMAR08Rev.pdf>
- **Department of Commerce American Recovery and Reinvestment Act Award Terms**
<http://oam.ocs.doc.gov/docs/ARRA%20DOC%20Award%20Terms%20Final%205-20-09PDF.doc.pdf>
- **Special Award Conditions specified in the BTOP Award Package** (both BTOP-wide and project—specific)
- **BTOP Recipient Handbook**
http://www2.ntia.doc.gov/files/BTOP_Recipient_Handbook.pdf
- **BTOP Fact Sheets**
<http://www2.ntia.doc.gov/ManagementResources>





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Applicable Financial Assistance Regulations

Links to regulations and compliance guidelines can be found at:

<http://www2.ntia.doc.gov/>

The screenshot shows the BroadbandUSA website with the following elements:

- Header:** BroadbandUSA logo, "CONNECTING AMERICA'S COMMUNITIES", and navigation links: ABOUT, GRANTS AWARDED, RESOURCES, BRIEFING ROOM, GRANTS MANAGEMENT, CONTACT US.
- Home Link:** A link labeled "Home" is visible.
- Grants Management Section:**
 - Text:** "There are many federal and programmatic rules that govern BTOP grants. We recommend applicants familiarize themselves with all applicable regulations and requirements and the various phases of compliance. Below you'll find citations and URLs to some of the key federal rules. It is very important that you read the NOFA applicable to your grant and familiarize yourself with the underlying federal regulatory requirements as you prepare to receive your grant funding. Failure to comply with applicable federal rules and regulations may subject your application to denial, amendment or deobligation. It is our goal to help you achieve success."
 - Grantee Welcome Packet:**
 - Infrastructure Grant Recipients:**
 - [Instructions for Executing the Grant Agreement](#)
 - [Grants Timeline](#)
 - [Instructions for Federal Reporting](#)
 - [Welcome Packet FAQs](#)
 - SBA and PCC Grant Recipients:**
 - [Instructions for Executing the Grant Agreement](#)
 - [Grants Timeline](#)
 - [Instructions for Federal Reporting](#)
- Right Sidebar:**
 - Search:** A search bar with the text "Search this site:" and a "Search" button.
 - State Broadband Data & Development Grant Program:** A link with a map of the United States.
 - Broadband Match:** A link with an image of two hands shaking.
 - Social Media:** Links for RSS News Feed, Facebook, and Flickr.

Made possible by the Broadband Technology Opportunities Program





Government-Wide Administrative Regulations for Recipients

- Uniform Administrative Requirements
 - Financial and program management, including cost share and program income
 - Property and procurement standards, reports and record keeping
 - Requirements flow down to subrecipients





Administrative Regulations

Recipient Codes of Conduct (15 CFR Part 14)

- Recipients and subrecipients must have a written code of conduct governing performance of employees engaged in the awarding and administration of contracts
- No employee, officer, or agent of the recipient or subrecipient may participate in the selection, award, or administration of a contract, subcontract, or sub-grant supported by federal funds if a real or apparent conflict exists
- Conflict exists when a recipient employee, officer, or agent, any immediate family member, a partner, or organization which employs or is about to employ one of the above, has a financial or other interest in the firm selected for the award
- Recipients or subrecipients may not solicit or accept gratuities or favors from contractors, potential contractors, or sub-agreement parties





Administrative Regulations

Procurement Standards (15 CFR 14.40-48)

- BTOP recipients have to comply with federal regulations governing procurement
- In disputes, contractor must deal with the prime recipient and has no recourse to the federal agency
- Recipient must have written procurement procedures (15 CFR Part 14 details basic standards the recipients must follow in the written procedures)
- Competition is required unless justified
- Recipient must document:
 - The basis for contractor selection
 - Justification if the contract was not competed
 - Cost and price analysis





Administrative Regulations

Procurement Standards (15 CFR 14.40-48)

■ Prime Recipient and Subrecipients

- Code of Conduct
- Written procurement
- Competition
- Document basis of selection
- Justification if not competed
- Cost and price analysis

■ Prime/Sub and Contractors

- Ability to perform under Standard Terms and Conditions
- Perform with integrity
- Record of past performance
- Necessary financial resources
- Not debarred or on excluded party list





Procurement Standards Sub-recipient vs. Vendor

- A **sub-recipient** is involved in the activities of the award project.
 - Through the recipient, a sub-recipient performs substantive work on an award project to accomplish BTOP purposes.
 - Because a sub-award is financial assistance, the terms that apply to prime recipients generally apply to sub-recipients as well.
 - For example, sub-recipients must comply with programmatic requirements, administrative requirements in 15 CFR Part 14 or Part 24 (as applicable), cost principles, and audit requirements.
 - In implementing sub-awards, recipients should be aware that cost principles applicable to sub-recipients are based on the nature of the sub-recipient, e.g., state, local, or tribal government; nonprofit; university; or commercial organization and may not be the same cost principles that apply to the recipient.





Procurement Standards Sub-recipient vs. Vendor (cont.)

- A **contractor** or **vendor** is involved in procurement.
 - A contractor is merely a vendor providing goods or services to directly benefit the recipient.
 - The vendor does not perform substantive work on the project.
 - Data requirements for reporting vendor information are reduced and vendors cannot be delegated reporting responsibility.
 - The prime requirement is that the recipient uses a competitive selection process.





Administrative Regulations

Financial Reports

- 15 CFR § 14.50-53 set forth the reporting requirements for recipient's financial and program performance and for record retention
 - Records must be kept for 3 years after final closeout or after audit, litigation, or claim is resolved
 - OIG has unrestricted access and may interview recipient's personnel for as long as records are retained
- Recipients must manage and monitor subrecipient's performance and assure they comply with audit requirements
- Recipients may receive cash advances for immediate expenses only (usually monthly needs)
- Recipient is required to maintain their advances in interest-bearing insured accounts
- Recipients must submit financial and performance reports quarterly





Government-wide Cost Principles for Recipients

Organization Type	Cost Principles
For Profit Entities	48 CFR Part 31.2 (Federal Acquisition Regulations)
Institutions of Higher Education	2 CFR Part 220 (OMB Circular A-21)
Non Profit Organizations	2 CFR Part 230 (OMB Circular A-122)
Hospitals	45 CFR, Part 74 (E)
State, Local and Tribal Governments	2 CFR Part 225 (OMB Circular A-87)

- For costs to be allowable, they must be:
 - **Consistent**: consistent treatment between award and other activities of the organization
 - **Reasonable**: ordinary and necessary, market prices, prudent person, established practices
 - **Allocable**: relative benefits received, all activities share cost, cost allocation plan
- Additionally, they should be determined in accordance with GAAP, not be included as a match for any other federal award, and adequately documented in the accounting records





Cost Principles: Direct vs. Indirect Costs

Cost Type	Definition	Includes:
Direct Costs	<i>Costs that can be identified specifically with a particular cost objective and comply with allowable guidelines</i>	<ul style="list-style-type: none">• Personnel• Travel• Equipment• Program materials/supplies• Contracts• Other
Indirect Costs	<i>Costs that cannot be readily identified with a single cost objective but identified with common or joint objectives that comply with allowable guidelines</i>	<p>General administration</p> <ul style="list-style-type: none">• Salaries / expenses of executive officers• Personnel administration• Accounting• Fringe benefits• Office rent and maintenance• General purpose office equipment, supplies, computers, printers, copiers, etc.





Cost Principles: Negotiated Indirect Cost Rate Agreement

- Recipients with indirect costs in their budget must have an approved indirect cost rate
- If recipients did not submit and get approved an indirect cost rate as a part of the their application budget, they must submit a cost allocation plan and an indirect cost rate proposal within **90 days of award start date** to the DOC Office of Acquisition Management (OAM)
 - This plan should be based on the recipient's actual costs for its most recently completed and audited fiscal year
 - Extensions to the 90 day deadline may only be approved by the Grants Officer assigned to the application
- The cost allocation plan and the indirect cost rate proposal should be submitted to:
 - U.S. Department of Commerce
 - 1401 Constitution Avenue, N.W.
 - Office of Acquisition Management, Room 6412
 - Washington, DC 20230
 - Attn: Indirect Cost Program





Cost Principles: Negotiated Indirect Cost Rate Agreement

- The Department of Commerce will negotiate with the recipient and approve the Negotiated Indirect Cost Rate Agreement (NICRA) rate which allows the recipient to include indirect costs as allowable project expenses
- The recipient must also provide the Grants Officer with a copy of the indirect cost proposal transmittal letter
- For guidance on how to develop an indirect cost plan, please go to:
<http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm>





Eligible and Ineligible Costs: Infrastructure Projects

Eligible Costs

- Construction or improvement of facilities required to provide broadband service
- Long-term leases of facilities required to provide broadband service, including (IRU) agreements
- Pre-application expenses less than 5 percent of eligible costs
- Indirect costs

Ineligible Costs

- Operating expenses of the applicant
- Costs incurred prior to application date
- Acquisition of an affiliate, including the acquisition of the stock of an affiliate
- Purchase or lease of any vehicle other than those used primarily in construction or system improvements
- Merger or consolidation of entities
- Costs incurred in acquiring spectrum as part of an FCC auction or in a secondary market acquisition





Eligible and Ineligible Costs: PCC Projects

Eligible Costs

- Acquiring broadband-related equipment, instrumentation, networking capability, hardware and software, and digital network technology for broadband services
- Developing and providing training, education, support, and awareness programs or web-based resources
- Facilitating access to broadband services (i.e., making public computer centers accessible to the disabled)
- Installing or upgrading broadband facilities on a one-time, capital improvement basis
- Constructing, acquiring, or leasing a new facility
- Indirect costs
- Pre-application expenses less than 5% of eligible costs

Ineligible Costs

- BTOP grant funds may not be used to fund purchases that are not used predominantly for expanding public access to broadband service or enhancing broadband capacity at public computer center locations





Eligible and Ineligible Costs: SBA Projects

Eligible Costs

- Acquiring broadband-related equipment, instrumentation, networking capability, hardware and software, and digital network technology for broadband services
- Developing and providing training, education, support, and awareness programs, as well as web-based content that is incidental to the program's purposes
- Conducting broadband-related public education, outreach, support, and awareness campaigns
- Implementing programs to facilitate greater access to broadband service, devices, and equipment
- Indirect costs
- Pre-application expenses less than 5% of eligible costs

Ineligible Costs

- BTOP grant funds may not be used for expenses or purchases that are not used predominantly for the provision of broadband education, awareness, training, access, equipment, and support
- Costs associated with constructing or leasing broadband facilities and infrastructure are not eligible





Tax Rules for BTOP Grants

- Applicants who are not exempt from taxation should consult with their tax advisors regarding the potential tax consequences of BTOP grants
- For an example of the analysis that the Internal Revenue Service may apply to BTOP grants, please see a recent letter from the IRS to the Department of Commerce at http://www.broadbandusa.gov/files/IRS_guidance030910.pdf
- Federal taxes are not an eligible cost under federal grant programs such as BTOP





Government-Wide Audit Requirements

- All BTOP awards are subject to audit by the Department of Commerce Office of Inspector General and the Government Accountability Office
- OMB Circular A-133 applies to states, local governments, and non-profit organizations
 - The circular implements the Single Audit Act Amendments of 1996, establishing uniform audit requirements for non-federal entities that administer federal awards
- OMB Circular A-133 Subpart B § 235 (program specific audits) applies to For-Profit entities
- Depending on the nature of the recipient, the appropriate OMB circulars and regulations are incorporated by reference into award agreements, thus becoming enforceable between the agency and the recipient on a contractual basis
- An audit is required within 90 days after the end of the first year and within 90 days from the project expiration date, including the closeout period for the award
- Audits must be submitted to the Federal Audit Clearinghouse within 30 days of the receipt of the auditor's report, or 9 months after the end of the audit period
- Audit of the award may result in the disallowance of costs after closeout





Key American Recovery & Reinvestment Act (ARRA) Requirements

- **Section 1606: Wage Rate Requirements**

Requires the payment of Davis-Bacon Act (40 USC Chapter 31) wage rates to “laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government” pursuant to the ARRA

- **Section 1605: Buy American**

Requires that projects funded by ARRA for the construction, alteration, maintenance, or repair of a public building or public work use American iron, steel and manufactured goods in projects, unless one of several specified exemptions applies. This requirement is to be applied in a manner consistent with U.S. obligations under international agreements

- **ARRA Reporting Requirement**

All BTOP recipients are required to submit an ARRA report by the 10th day of each calendar quarter to FederalReporting.gov. For additional information on the ARRA reporting requirements, please visit <http://www.federalreporting.gov>.





BTOP Special Award Conditions

- By accepting the BTOP award, the recipients agree to meet all BTOP-wide Special Award Conditions (SACs) in addition to those specifically assigned to their project

BTOP-Wide SACs	Project-Specific SACs
Guidelines for Matching Funds	Accounting System Verification
Incorporation of Requirements from the Notice of Funding Availability	Construction-Related Requirements
Nondiscrimination and Interconnection	Buy America Waiver Approval
Underserved and Unserved Service Areas	Census Block Waiver
Security Interests in Real Property	Matching Waiver
Payments and Advances	For-Profit Recipient Audit Requirement
Post-Award Reporting Requirements	Indirect Cost Used as Cost Share
Notice of Limited Waiver of Section 1605 (Buy America Requirement)	Guidelines for Matching Funds





BTOP Special Environmental Award Conditions

- Some BTOP recipients may also have to comply with the National Environmental Policy Act (NEPA)/Section 106 Environmental requirements, which include:
 - Completion of environmental reviews and impact determinations to comply with National Environmental Policy Act of 1969
 - Completion of consultation required under Section 106 of the National Historic Preservation Act of 1966 and Section 7 of the Endangered Species Act
 - Compliance with all federal, state and local environmental and historic preservation laws
 - EA SAC allows for limited procurement for goods and services based upon a submitted and approved budget for the 6-month period. Discuss with FPO and Review Environmental Webinar





BTOP Special Award Conditions

- The BTOP Program Office and Grants Office will monitor compliance with the special award conditions.
- It is critical that recipients review the deadlines associated with each special award condition and communicate early and often with their FPOs and Grants Officers on the status of meeting each special award condition.
- As the recipient fulfills the requirement of each special award condition, the recipient must document completion and submit to their FPO and Grants Officer for the official award file in accordance with the timeframes identified in the recipient's special award condition.
- Failure to comply with a special award condition may result in a hold being placed on a recipient's ability to draw down funds or, in extreme cases, termination of award.





Department of Commerce Policies: Security Interests

- All BTOP award recipients must execute a **security interest** in favor of the Federal Government in all real property and equipment purchased or improved with BTOP grant funds.
 - The security interest protects the federal share of the recipient's investment in such property over the course of its useful life.
 - The security interest also prohibits the sale, mortgage, or other transfer or conveyance of an interest in such property, and contains covenants requiring the recipient to use these items solely for the purposes for which the award was made.
 - Generally, for real property, the security interest must be recorded as an Agreement and Mortgage or, for recipients that are public entities, as a Covenant of Purpose, Use, and Ownership.
 - For equipment, the security interest should be recorded using Form UCC-1 in the proper jurisdiction. These must be renewed as required, e.g., every five years, over the useful life of the equipment.





Reporting Deadlines

- BTOP award recipients are required to submit the following reports each calendar quarter:

ARRA report

Financial report (SF-425)

Performance report

Baseline report (first award quarter only)

Quarter 1	January 1 – March 31	Quarter 3	July 1 – September 30
Quarter 2	April 1 – June 30	Quarter 4	October 31 – December 31

Report Type	Reporting Deadline	Where to Submit?
ARRA Report	10 th day of the quarter	FederalReporting.gov
Financial Report (SF-425)	30 th day of the quarter	Grants Office
BTOP-Specific Quarterly Performance Report	30 th day of the quarter	NTIA Program Office
BTOP-Specific Baseline Report	30 th day of the first full award quarter only	NTIA Program Office





ARRA Reporting – Tips for Success

- As a prime recipient, coordinate closely with your subrecipients. Prime recipients have ultimate responsibility for the completeness and accuracy of subrecipient report data, whether the prime recipient files the report on behalf of the subrecipient or requires the subrecipient to file its own reports.
- Register promptly in CCR and ensure that registration remains current.
 - It takes several days to complete initial CCR registration, so start promptly.
 - Registration is valid for one year, and must be renewed before that time. If the CCR Point of Contact information remains current, the PoC will receive notices as the renewal deadline approaches. If the PoC has changed, these notices may not reach the correct person.
 - If the renewal deadline passes, your CCR registration will lapse. The reactivation process is cumbersome and takes several weeks, which can prevent you from filing a timely ARRA report during the 10-day quarterly window.
- Provide a project description that is appropriately brief and that a lay person can understand.
- Report the BTOP Award Date accurately, as the first day of the month in which the Grants Officer signed the award.





Enforcement

- The Federal Government will take actions against non-compliant award recipients based on the severity of non-compliance.
- These enforcement actions may one or more of the following:
 - High risk Special Award Conditions
 - Suspension of payments
 - Suspension of award
 - Termination for cause
 - Termination for convenience
 - Debarment and Suspension





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Questions

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